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7 UNITED STATES DISTRICT COURT
8
9 DISTRICT OF NEVADA

10 THOMAS DILLON, et al.) Case No. CV-N-03-0119-HDM (VPC)
11)
12 Plaintiffs,)
13 vs.)
14 JAMES GRAF, et al.)
15 Defendants.)
16

17 **PRELIMINARY REPORT**
18 **OF SIERRA ADMINISTRATION MANAGERS, INC.**

19 Pursuant to Paragraph 3.C of the Court's order of March 26, 2003, Defendant Sierra
20 Administration Managers, Inc. ("SAMI") files its Preliminary Report.¹ This Report sets forth
21 this Defendant's "preliminary understanding of the facts involved in the litigation and the
22 critical factual and legal issues." It further contains a list of affiliated companies and counsel,
23 and a list of related cases to the extent known by this Defendant.
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¹ SAMI is incorrectly named in the Complaint as "Sierra Administrations Marketing, Inc."

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1 1. Facts Involved in the Litigation:

2 Sierra Administration Managers, Inc., was a Northern Nevada insurance brokerage²
3 which, in November 2000, contracted to act as a managing general agent ("MGA") for Co-
4 Defendant Employers Mutual, LLC. Based on several Letters of Binding Authority from
5 nationally prominent health insurers, SAMI undertook to act as the agent for Employers
6 Mutual to market ERISA-covered health insurance plans to other Nevada insurance brokers
7 and agents. In turn, those other brokers and agents marketed the insurance plans to various
8 employers for the establishment of Association Health and Welfare Benefit Plans ("AWBPs").
9

10 On December 12, 2001, the Secretary of the United States Department of Labor filed a
11 Complaint in the United States District Court for the District of Nevada,³ alleging that the
12 AWBPs violated Title I of ERISA, 29 U.S.C. 1001 *et seq.*, based on the allegation that the
13 principals of Employers Mutual depleted the assets of the various insurance trusts. The
14 Secretary sought and obtained an Order appointing an Independent Fiduciary to marshal assets
15 and "to pursue all legitimate claims ... [the AWBPS] may have against third parties..." Sierra
16 Administration, Inc., ("SAI") – a third-party claims administrator ("TPA") owned by the
17 principals of SAMI – was included in that action as a Rule 19(a)(1) defendant.⁴ SAI has now
18 been voluntarily dismissed from the Department of Labor action.
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21 On March 3, 2003, Thomas A. Dillon, the duly-appointed Independent Fiduciary, filed
22 the instant Complaint against various entities, including SAMI. Along with approximately
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24 ² It is now defunct and without assets, primarily as a result of the events giving rise to this litigation.
25 SAMI is in the process of filing for protection in the United States Bankruptcy Court for the District of Nevada.

26 ³ Chao c. Graf, et al., Case No. CV-N-01-0698-DWH(RAM).

27 ⁴ The Secretary's Complaint did not seek relief against SAI, other than an Order that it cooperate fully
28 with the Independent Fiduciary in providing access to books and records.

1 four hundred other alleged "Insurance Producers", Dillon has sued SAMI on behalf of the
2 AWBPs for (a) "Breach of Contract, (b) "Insurance Producer Negligence", alternatively
3 described as "Malpractice", and (c) "Breach of Warranty of Authority." According to the
4 Dillon Complaint, the multiple "Insurance Producer Defendants" all – each and every one –
5 improperly relied upon the letters of binding authority produced by Employers Mutual on the
6 letterhead of the various established health care providers.
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8 2. Preliminary Statement as to Critical Legal Issues:

9 As set forth above, SAMI's sole role in this matter was that of a managing general
10 agent, marketing Employers Mutual plans to other insurance brokers in the State of Nevada,
11 who in turn dealt directly with the various employers and employer trusts, alternatively
12 designated "Employers Mutual Plans" ("EMPs") or "Employee Welfare Benefit Plans"
13 (EWBPs"). As such, SAMI had no contact or dealings with any of the employers/EWBPs, nor
14 any contractual relationship or privity with them.
15

16 Defendant SAMI is in receipt of the Proposed Preliminary Report to be filed on behalf
17 of the Independent Fiduciary.⁵ In that document, Dillon addresses the Fiduciary's standing to
18 bring and maintain this action against the "Insurance Producer Defendants". Notably absent
19 from Dillon's Preliminary Report, however, is any legal support for his claims against MGAs
20 such as SAMI, who had no contractual relationship with the EWBPs on whose behalf he is
21 authorized to claim.
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25 ⁵ SAMI is appreciative of the efforts of the Fiduciary and his counsel to circulate a Proposed Joint
26 Preliminary Report. SAMI's filing of a separate Preliminary Report should not be understood as reflecting any
27 criticism of that effort. The dictates of time, however, precluded SAMI from submitting its proposed additions to
28 Dillon's counsel in sufficient time for inclusion in a Joint Report. Moreover, the Court's March 26, 2003 Order
appears to contemplate separate filings by the various parties.

1 The District Court's December 13, 2001 Order appointed Mr. Dillon as Independent
2 Fiduciary, and granted him the authority "to pursue all legitimate claims ...the Employers
3 Mutual Plans may have against third parties..." The Proposed Preliminary Report recites that
4 the Fiduciary's claims on behalf of the EWBP's against the insurance producer defendants are
5 premised upon "Breach of Contract to Procure Insurance", "Insurance Producer Negligence"
6 ("Producer Malpractice"), and "Breach of Warranty of Authority". The Proposed Preliminary
7 Report concedes – correctly – that each of these legal theories of recovery is dependant upon
8 the Fiduciary's ability to prove the existence of a contract between the EWBP's and each
9 particular defendant insurance producer. See, Plaintiff's Preliminary Report, Sections
10 II(iii)(B)(1-3).
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13 Given the absence of any contractual relationship between Sierra Administration
14 Managers, Inc., and any of the EWBP's on whose behalf the Fiduciary has authority to claim,
15 Dillon's standing to proceed against SAMI and other MGAs is subject to serious question.
16 Dillon's Preliminary Report appears to concede as much.
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18 3. List of Affiliated Companies and Counsel:

19 As set forth above, the only affiliated company with Sierra Administrations Managers,
20 Inc. ("SAMI") is Sierra Administration, Inc. ("SAI"), a now-defunct third-party administrator
21 ("TPA"). Vernon Leverty, Esq., is business counsel for both entities. Allan Smith, Esq., is
22 bankruptcy counsel for both entities.
23


24 4. List of Related Cases:

25 The only related case known at this time is Saint Mary's Regional Medical Center v.
26 Geotemps, Inc., Case No. CV-S-02-0600-RLH (PAL), currently pending in the United States
27 District Court for the District of Nevada. This is a collection action against an employer-
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1 participant in an Employers Mutual health plan. The employer, Geotemps, Inc., has filed a
2 Third-Party Complaint against SAMI, SAI, and several other insurance professionals.

3 Respectfully submitted this 31st day of July, 2003.

4 LAXALT & NOMURA, LTD.

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